

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

REPORT AND RECOMMENDATION

FRAZIER, Magistrate Judge:

Before the Court is a motion to dismiss filed by defendants Robert J. Hertz and B. Unfried (Doc. No. 16). These defendants seek dismissal pursuant to Rule 12(b)(6) for failure to state a claim upon which relief could be granted. Defendant Unfried challenges Count 1, arguing that the allegations fail to suggest that she was deliberately indifferent to plaintiff's serious medical needs. Defendant Hertz challenges part of Count 2, arguing that the allegations do not suggest that he personally participated in a Constitutional deprivation.

Plaintiff's response was due within 30 days. SDIL-LR 7.1(c). When a response was not filed in a timely manner, plaintiff was ordered to show cause why the motion should not be granted and a new response deadline was set for November 26, 2007 (Doc. No. 24). A response has not been filed. The absence of a response is deemed an admission to the merits of the motion. SDIL-LR 7.1(c).

IT IS RECOMMENDED that the motion to dismiss (Doc. No. 16) be GRANTED. Plaintiff's claim against defendant Unfried (Count 1) should be dismissed, and plaintiff's claim against defendant Hertz (part of Count 2) should be dismissed. If this recommendation is adopted, Count 2 will remain against defendants Beswisk, Wiegers, and Doe.

SUBMITTED: February 5, 2008

s/Philip M. Frazier
PHILIP M. FRAZIER
UNITED STATES MAGISTRATE JUDGE